National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
June 12, 2009		W-3212

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Camelot Terrace, Inc. (13-CA-43936, 44044; 354 NLRB No. 24) Streator, IL, May 28, 2009. The Board adopted the administrative law judge's supplemental decision finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging certified nursing assistant Crystal Lopez. The judge found that Lopez did not quit her job, as the Respondent contended, but, rather, that the Respondent discharged her. The judge further found that Lopez, who was the leading supporter in the Union's organizing campaign at the Respondent's facility, engaged in protected concerted activities, that the Respondent had knowledge of these activities and had animus against Lopez and the Union, and that there was a nexus between Lopez's protected activities and the Respondent's adverse action against her. The judge additionally found that the Respondent had failed to rebut the case against it. [HTML] [PDF]

In his initial decision in the case, the judge had found no violation on the basis that Lopez had quit her job rather than been discharged. The Board, however, in its prior decision, *Camelot Terrace, Inc.*, 353 NLRB No. 20 (2008), found that the judge had failed to articulate a basis for certain credibility determinations and had failed to address evidence that arguably contradicted a number of his factual findings. The Board, therefore, remanded the case to the judge to make reasoned credibility resolutions and findings of fact that detailed the supporting evidence and discredited or reconciled the contrary evidence.

In its supplemental decision, the Board found that, on remand, the judge addressed the conflicting testimony and record evidence regarding issues material to Lopez's discharge and made reasoned credibility resolutions and findings of fact. The Board further found that the record supported the judge's findings and that the Respondent's exceptions lacked merit. In particular, the Board rejected the Respondent's contention that the judge erred in relying on Director of Nursing Huffman's testimony in finding that, on Feb. 25, 2007, Lopez was in the dining room assisting residents with breakfast during the period of 9:00 a.m. to 9:15 a.m.

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge Lawrence W. Cullen issued his supplemental decision Dec. 18, 2008.

Cook DuPage Transportation Co. (13-CA-44649, 44861; 354 NLRB No. 31) Chicago, IL, June 4, 2009. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(5) of the Act by unilaterally laying off or terminating 40 employees; unilaterally eliminating its standby driver program; and failing and refusing to provide information requested by the Union. [HTML] [PDF]

Member Schaumber, in agreeing with the judge that the Respondent violated Section 8(a)(5) by unilaterally laying off or terminating its employees, noted that he does not agree that any decision to lay off employees would be a per se mandatory subject of bargaining. However, he agreed that under extant Board law, which he applies for institutional reasons, the

Respondent's decision to lay off or terminate employees was a mandatory subject of bargaining in the circumstances of this particular case, and the Respondent violated Section 8(a)(5) by failing to give the Union advance notice and an opportunity to bargain about this decision.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Amalgamated Transit Union, Local 1028; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chicago on Dec. 15, 2008. Adm. Law Judge Robert A. Giannasi issued his decision Feb. 12, 2009.

Dayton Newspaper, Inc. d/b/a Cox Ohio Publishing (9-CA-44559; 354 NLRB No. 32)
Dayton, OH, June 5, 2009. The Board found that, based on the stipulated record, the Respondent violated Section 8(a)(5) of the Act by failing and refusing to increase the mileage reimbursement rate for unit employees from 29 cents per mile to 32 cents per mile, pursuant to Article 4.01 of its posted conditions. In so doing, the Board found unavailing the Respondent's contention that raising the mileage rate pursuant to Article 4.01 would subject it to liability under McClatchy Newspapers, 321 NLRB 1386 (1996), enfd. 131 F.3d 1026 (D.C. Cir. 1997), cert. denied 524 U.S. 937 (1998). The Board found, instead, that the Union explicitly conveyed that it accepted the terms of Article 4.01 and thus waived any claim that raising the rate pursuant to the provision was unlawful under McClatchy. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Family Healthcare, Inc. (9-CA-44539; 354 NLRB No. 29) Chillicothe, OH, June 4, 2009. The Board adopted the administrative law judge's findings that (1) the Respondent violated Section 8(a)(1) of the Act by discharging Dr. Kristine McCallum for engaging in protected concerted activity, and (2) Dr. McCallum is not a supervisor within the meaning of Section 2(11). The Board further denied the General Counsel's request for compound interest computed on a quarterly basis for any backpay awarded. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Kristine McCallum, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Chillicothe, Dec. 15-16, 2008. Adm. Law Judge Arthur J. Amchan issued his decision Feb. 5, 2009.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Program Avance En Puerto Rico, Inc. (Office and Professional Employees) Caguas, PR, June 2, 2009. 24-CA-10947, et al.; JD(ATL)-10-09, Judge William N. Cates.

Walt Disney World Co. (Food & Commercial Workers Local 1625) Lake Buena Vista, FL, June 2, 2009. 12-CA-25889; JD(ATL)-12-09, Judge George Carson II.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Amalgamated Credit Union (Office and Professional Employees Local 393) (7-CA-51457; 354 NLRB No. 30) Saginaw, MI, June 3, 2009. [HTML] [PDF]

UNPUBLISHED BOARD DECISION AND ORDER IN REPRESENTATION CASE

(In the following case, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Sears Logistics Services, Inc., a subsidiary of Sears, Roebuck and Co., Stockton, CA, 32-RC-5658, June 2, 2009 (Chairman Liebman and Member Schaumber)
